

Site by the installation of additional security fencing.

In September 1991, the EPA issued the PRPs an Administrative Order to conduct the remedial design and the remedial action. The two PRPs agreed to comply with the Order. Design of the EPA-selected remedy was begun in October 1991. The Intermediate Engineering Report (IER) was approved by the EPA on August 31, 1993. However, certain concerns raised by the federal and state natural resource trustees caused the EPA to reexamine the remedial design as proposed in the IER. As a result of the reexamination, the September 1990 ROD was amended in June 1995. The amendment eliminated the incineration contingency whereby all highly contaminated sediments in an embayment area in the Niagara River adjacent to the landfill would have had to be excavated and incinerated were they to remain outside the final positioning of the slurry wall. The slurry wall was in fact redesigned so as to be positioned to run as close to the shoreline as was practical and still contain any migration of the NAPL plumes. Remedial action activity began in April 1996. The construction of the slurry wall was completed in 1996 along with excavation of contaminated sediments from the embayment and consolidation of these sediments into the landfill. The installation of the permanent cap over the landfill was completed during the 1997 construction season.

The remedy for the Site was completed in March 1999 when the forcemain system for pumping leachate from the landfill to the Love Canal Treatment Facility became operational. A Preliminary Closeout Report (PCOR) was approved by the EPA on September 2, 1999. The PCOR documented the fact that all construction activities identified as necessary remedial actions for the Site pursuant to the ROD, as amended, had been completed. The forcemain system continues to pump sufficient leachate from the landfill so as to maintain an inward gradient across the slurry wall. The leachate pumping system reached the steady-state phase in November 2000.

An Operation and Maintenance (O&M) Manual was developed and implemented. Annual reports are provided to the EPA and the NYSDEC and both the EPA and the NYSDEC believe that the reports for 2001 and 2002 confirm that the remedy for the Site has been successfully implemented.

A Consent Decree between EPA and the State of New York and OCC and Olin was approved and entered by a federal court on October 1, 1999. Under

the terms of the Consent Decree, the PRPs agreed to implement the long-term O&M for the Site and reimbursed to the EPA \$6,800,000 of its past costs plus interest. Additionally, OCC and Olin implemented institutional controls in the form of deed notifications that the Site property was subject to the terms of the Consent Decree, and use restrictions that run with the land that prohibit future uses of the property such as groundwater extraction or excavation that could adversely affect the remedy for the Site. These institutional controls are recorded in the property records of Niagara County.

The Site no longer poses a significant threat to human health or the environment. However, hazardous substances remain at the Site above levels that would allow for unlimited use with unrestricted exposure. Pursuant to Section 121(c) of CERCLA, the EPA and/or the State will review Site remedies no less often than every five years. The first Five-Year Review for this Site was signed by the EPA on August 15, 2001, and concluded that the response actions implemented at the Site are in accordance with the remedy selected by the EPA and that the remedy continues to be protective of human health and the environment. The next Five-Year Review will be completed before August 2006.

Public participation activities for this Site have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and Section 117, 42 U.S.C. 9617. The ROD was subject to a public review process. All other documents and information which the EPA relied on, or considered in recommending this deletion are available for the public to review at the information repositories.

One of the three criteria for site deletion is when "responsible parties or other persons have implemented all appropriate response actions required" (40 CFR 300.425(e)(1)(i)). The EPA, with the concurrence of the State of New York, through the NYSDEC, believes that this criterion for deletion has been met. Consequently, the EPA is proposing deletion of this Site from the NPL.

Dated: March 4, 2004.

**Kathleen C. Callahan,**

*Acting Regional Administrator, Region 2.*

[FR Doc. 04-5873 Filed 3-16-04; 8:45 am]

**BILLING CODE 6560-50-M**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-7619-5]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Niagara County Refuse Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA), Region 2, announces its intent to delete the Niagara County Refuse Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this action.

The Niagara County Refuse Superfund Site is located in the Town of Wheatfield, Niagara County, New York. The NPL is appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and New York State, through the Department of Environmental Conservation (NYSDEC) have determined that all appropriate response actions have been implemented and no further response actions, other than operation, maintenance, and monitoring, are required. In addition, EPA and the NYSDEC have determined that the Site is protective of public health, welfare, and the environment.

**DATES:** EPA will accept comments concerning its intent to delete on or before April 16, 2004.

**ADDRESSES:** Comments should be submitted to: Michael J. Negrelli, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, New York 10007-1866.

Comprehensive information on the Site is available for viewing, by appointment only, at: U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, Room 1828, New York, New York 10007-1866, (212) 637-4308, Hours: Monday through Friday: 9 a.m. through 5 p.m.

Information on the Site is also available for viewing at the Site Administrative Record Repository located at: North Tonawanda Public Library, 505 Meadow Road, North Tonawanda, New York 14120, Tel. (716)

693-4132, Hours: Monday through Thursday: 9:30 a.m. through 9 p.m., Friday and Saturday 9:30 a.m. through 5 p.m.

Site information is also available for viewing at the following location: U.S. EPA Public Information Office, 345 Third Street, Suite 530, Niagara Falls, New York 14303, Tel. (716) 285-8842, Hours: Monday through Friday: 8 a.m. to 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Negrelli at the address provided above, by telephone at (212) 637-4278, by electronic mail at [Negrelli.Mike@epa.gov](mailto:Negrelli.Mike@epa.gov), or by FAX at (212) 637-4284.

#### SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Site Deletion

#### I. Introduction

EPA, Region 2, announces its intent to delete the Niagara County Refuse Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this action. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). As described in § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at the site warrant such action.

EPA will accept comments concerning the deletion of the Site from the NPL for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that the EPA is using for this action. Section IV discusses how the Site meets the NPL deletion criteria.

#### II. NPL Deletion Criteria

Section 300.425 (e) of the NCP provides that sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State, shall consider whether any of the following criteria has been met:

- (i) Responsible parties or other persons have implemented all appropriate response actions required;
- (ii) All appropriate Fund-financed responses under CERCLA have been

implemented, and no further response action by responsible parties is appropriate; or,

(iii) A remedial investigation has shown that the release poses no significant threat to public health or to the environment and, therefore, taking remedial measures is not appropriate.

#### III. Deletion Procedures

The following procedures apply to the deletion of this Site:

1. EPA, Region 2, issued a Record of Decision (ROD) for the Site on September 24, 1993, which selected the remedy for the Site.
2. Responsible parties implemented the remedy selected in the ROD as described in a Final Close Out Report dated August 14, 2003.
3. EPA, Region 2, recommends deletion and has prepared the relevant documents.
4. The State of New York, through the NYSDEC, concurred with the proposed deletion of the Site in a letter dated September 29, 2003.
5. A notice has been published in a local newspaper, and in addition, a notice has been distributed to appropriate Federal, State and local officials, and other interested parties announcing a 30-day public comment period which starts on the date of publication of this notice in the **Federal Register** and a newspaper of record.

6. The EPA has made available the relevant documents to this decision at the addresses listed above.

7. Upon completion of the thirty (30) day public comment period, EPA will evaluate all comments received before issuing a final decision on deletion. The EPA, Region 2, will prepare a Responsiveness Summary, if appropriate, which will address significant comments received during the public comment period. The Responsiveness Summary will be made available to the public at the information repositories.

If, after consideration of the comments it receives, EPA decides to proceed with the deletion, EPA will place a Notice of Deletion in the **Federal Register**. Deletion does not occur until the final Notice of Deletion is published in the **Federal Register**. Generally, the NPL will reflect deletions in the next final update following the final notice publication.

#### IV. Basis for Intended Site Deletion

The following summary provides a brief description and history of the Niagara County Refuse Superfund Site and provides the Agency's rationale for recommending deletion of the Site from the NPL.

The Niagara County Refuse site is a former municipal landfill, comprised of approximately 65 acres, located along the eastern border of the Town of Wheatfield, New York and the western border of the City of North Tonawanda. The southern edge of the Site lies approximately 500 feet north of the Niagara River.

During the landfill's operational period (1968-1976), the Niagara County Refuse Disposal District (NCRDD) accepted municipal refuse and industrial wastes, which are commingled throughout the landfill. More than 100 waste generators or transporters are thought to have used the Site. Disposed materials included heat-treatment salts, plating-tank sludge, tetrachloroethylene, PVC skins and emulsion, thiazole polymer blends, polyvinyl alcohol, phenolic resins, and brine sludge containing mercury.

Beginning in 1980, the Site became the focus of several investigations by EPA, NYSDEC, and the United States Geological Survey (USGS) resulting in the Site being placed on the National Priorities List (NPL) in September 1983.

In March 1989, a group of fourteen potentially responsible parties (PRPs) entered into an administrative consent order with EPA to perform a Remedial Investigation/Feasibility Study (RI/FS). In February 1995, a group of twelve PRPs entered into a judicial consent decree with the United States on behalf of EPA to conduct the remedial design, remedial construction, operation, maintenance, and monitoring for the Site. EPA signed a Record of Decision (ROD) for the Site on September 24, 1993, selecting the remedy for the Site as follows:

- Construction of a New York State Part 360 Standard Landfill Cap;
- Construction of a clay perimeter barrier wall;
- Construction of a gas venting system beneath the cap;
- Construction of a leachate collection system;
- Removal of the field tile drains located to the west of the landfill;
- Performance of an ecological assessment of the adjacent wetlands;
- Implementation of deed and access restrictions;
- Implementation of a long-term operation & maintenance program for the cap, and gas venting and leachate collection systems; and
- Implementation of long-term air and water quality monitoring.

On-site construction at the Site commenced in November 1998, continuing unabated through the next two construction seasons and in

September 2000, EPA conducted a final inspection with NYSDEC and the PRPs. In December 2000, EPA issued its approval of the Remedial Action Report. The ecological assessment recognized that there were valuable wetlands and uplands located on the Site. A restoration plan was developed and implemented to account for the wetland losses incurred by the capping, and 0.17 acres of wetland were created as part of the work done at the Site. The success of the restoration effort is described in the Site Annual Monitoring Reports. Additionally, institutional controls, consisting of recording the Consent Decree and placing restrictive covenants on the real property at the Site, have been implemented by Niagara County and the Town of Wheatfield.

An Operation, Maintenance, and Monitoring (OM&M) Manual was developed and implemented. Financial assurance for OM&M activities has been provided by the PRPs in the form of demand notes as required by the Consent Decree. Annual reports are provided to EPA and NYSDEC and both EPA and NYSDEC believe that the reports for 2001 and 2002 confirm that the remedy for the Site has been successfully implemented.

The Site has been cleaned and environmentally valuable lands restored. The Site no longer poses an unacceptable risk to human health or the environment. However, hazardous substances remain at the Site above levels that would allow for unlimited use with unrestricted exposure. Pursuant to section 121(c) of CERCLA, EPA and/or the State will review site remedies no less often than every five years. The EPA, Region 2, conducted a Five-Year Review of the Site in November 2003. The Five-Year Review concluded that the contamination at the Niagara County Refuse site is under control and there is no exposure to human or environmental receptors from Site-related contaminants due to permanent measures in place at the Site.

Public participation activities for this Site have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and section 117, 42 U.S.C. 9617. The ROD was subject to a public review process. All other documents and information which EPA relied on or considered in recommending this deletion are available for the public to review at the information repositories.

One of the three criteria for site deletion is when "responsible parties or other persons have implemented all appropriate response actions required" (40 CFR 300.425(e)(1)(i)). EPA, with the concurrence of the State of New York, through the NYSDEC, believes that this

criterion for deletion has been met. Subsequently, EPA is proposing deletion of this Site from the NPL.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water Supply.

Dated: December 24, 2003.

**Kathleen Callahan,**

*Acting Regional Administrator, Region 2.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[FRL-7637-4]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Love Canal Superfund site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA), Region II, announces its intent to delete the Love Canal Superfund site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York (State), through the New York State Department of Environmental Conservation (NYSDEC), have determined that all appropriate response actions under CERCLA have been implemented and that no further response action pursuant to CERCLA are appropriate.

**DATES:** Comments concerning this Action must be received by April 16, 2004.

**ADDRESSES:** Written comments should be submitted to: Damian J. Duda, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, New York 10007-1866.

Comprehensive information on this Site is available through the EPA Region

II public docket contained at: U.S. Environmental Protection Agency, Region II, Superfund Records Center, 290 Broadway, Room 1828, New York, NY 10007-1866, (212) 637-4308.

Hours: 9 a.m. to 5 p.m., Monday through Friday.

Information on the Site is also available for viewing at the following information repository: U.S. Environmental Protection Agency, 530 Third Street, Niagara Falls, New York 10460, (716) 285-8842.

#### FOR FURTHER INFORMATION CONTACT:

Damian Duda, at the address provided above, by telephone at (212) 637-4269, by electronic mail at [duda.damian@epa.gov](mailto:duda.damian@epa.gov) or by FAX at (212) 637-3966.

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#### I. Introduction

EPA Region II announces its intent to delete the Love Canal Superfund site, located in the City of Niagara Falls, Niagara County, New York from the NPL and requests public comment on this action. The NPL is Appendix B of the NCP, which EPA promulgated, pursuant to Section 105 of CERCLA. EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. Sites on the NPL can have remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, a site deleted from the NPL remains eligible for remedial actions, if conditions at the site warrant such action.

The Site is located in the southeast corner of the City of Niagara Falls, approximately ¼ mile north of the Niagara River in Niagara County, New York.

EPA will accept comments concerning the deletion of this Site from the NPL for thirty days after publication of this notice in the **Federal Register**.

#### II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State of New York, shall